

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RACHAEL B.,

Plaintiff,

Case No. C20-5897-SKV

V.

**COMMISSIONER OF SOCIAL
SECURITY,**

Defendant.

**ORDER RE: MOTION FOR
ATTORNEY FEES AND COSTS**

Defense

Plaintiff filed a motion requesting \$13,478.32 in attorney fees under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(b), and \$400 in costs under 28 U.S.C. § 2412(a)(1).

Dkt. 31. The Commissioner acknowledges that Plaintiff is the prevailing party, but argues that Plaintiff's fee request is unreasonably high. Dkt. 35. As explained below, the Court finds that a reduction is warranted, and thereby GRANTS IN PART and DENIES IN PART the motion.

Dkt. 31.

DISCUSSION

Under EAJA, the Court awards fees and expenses to a prevailing party in a suit against the government unless it concludes the position of the government was “substantially justified or that special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A).

1 The parties do not dispute that Plaintiff is the prevailing party here, and there are no
2 special circumstances that would make an award unjust. As noted above, the parties do dispute,
3 however, whether the amount of fees requested by Plaintiff is reasonable. The Court may award
4 EAJA fees for attorney hours *reasonably* expended by plaintiff's counsel. 28 U.S.C. §
5 2412(d)(2)(A). "The most useful starting point for determining the amount of a reasonable fee is
6 the number of hours reasonably expended on the litigation multiplied by a reasonable hourly
7 rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). "[E]xcessive, redundant, or otherwise
8 unnecessary" hours should be excluded from the fee award. *Id.* at 434. The Court must also
9 consider the results obtained when determining whether the fees requested by a prevailing party
10 for an unsuccessful appeal are reasonable. *Atkins v. Apfel*, 154 F.3d 986, 986, 989 (9th Cir.
11 1998) (citing *Hensley*, 461 U.S. 424).

12 "[T]he fee applicant bears the burden of establishing entitlement to an award and
13 documenting the appropriate hours expended[.]" *Hensley*, 461 U.S. at 437. However, "the party
14 opposing the fee application has a burden of rebuttal that requires submission of evidence to the
15 district court challenging the accuracy and reasonableness of the hours charged or the facts
16 asserted by the prevailing party in its submitted affidavits." *Gates v. Deukmejian*, 987 F.2d
17 1392, 1397-98 (9th Cir. 1992) (citations omitted).

18 The Commissioner here challenges the reasonableness of the fees, contending that some
19 of the time expended was excessive. The Commissioner seeks a reduction in the requested fees
20 of at least 10 percent on these grounds. Dkt. 35 at 2-6. For the following reasons, the Court
21 agrees that a reduction is warranted.

22 First, the Court finds that counsel's time expended prior to the filing of the opening brief
23 was excessive. Counsel had expended 52.88 hours reviewing the record, researching,

1 communicating with Plaintiff, and drafting by the date the opening brief was filed. Dkt. 31-2 at
 2 1-2. Even accounting for the 20 percent voluntary across-the-board reduction counsel provided,
 3 Dkt. 31 at 4, that number is only reduced to 42.3 hours. The Court has no reason to doubt that
 4 counsel expended that time, but the Court is not persuaded that all of this time was reasonably
 5 necessary. *See, e.g., Yong v. Comm'r of Social Sec.*, 2021 WL 4244506, at *2 (W.D. Wash. Sep.
 6 17, 2021) (collecting cases and finding that an average length of time to expend on an opening
 7 brief in this district is 17.9 hours, and average record is 1,534 pages long).

8 While the Court finds comparison to other cases informative in assessing the
 9 reasonableness of fee requests, the Court also focuses on the facts and specifics of the case at
 10 hand. The record in this case is less than average length at 1,035 pages, Plaintiff did not raise
 11 particularly novel challenges to the ALJ's decision, and the Court's decision notes various ways
 12 in which Plaintiff's briefing failed to fully address or challenge disputed aspects of the ALJ's
 13 decision. *See* Dkt. 28 at 5 n.3, 6 n.4, 7, 8-9. The Court also notes that counsel is a seasoned
 14 attorney and former ALJ. *See* Dkt. 31-2 at 2, 36-1 at 3. All of these factors suggest that a
 15 reduction of some degree is warranted. Although the Commissioner requested a reduction of *at*
 16 *least* 10 percent, the Court is also mindful of the fact that counsel filed responses to Defendant's
 17 third and fourth motions to extend time, and that Plaintiff's medical issues required more
 18 communication time than is typical.¹ Under the totality of these circumstances, the Court finds
 19 that a 10 percent reduction of the hours expended through March 9, 2021, is warranted.² *See*
 20 *Costa v. Comm'r of Social Sec. Admin.*, 690 F.3d 1132, 1136 (9th Cir. 2012) (explaining that a

21 ¹ *See* Dkt. 26 at 2, 5.

22 ² Through the date the opening brief was filed, counsel billed \$9,170.32. *See* Dkt. 31-2 at 1-2. Counsel
 23 voluntarily reduced the overall bill 20% (Dkt. 31-2 at 3), and thus billed Plaintiff \$7,336.26 for that
 period of time. The Court's additional 10% reduction of that amount totals \$733.63.

1 court's evaluation of fee reasonableness depends on "case-specific factors" such as "complexity
 2 of legal issues, the procedural history, the size of the record, and when counsel was retained").

3 Counsel also apparently expended excessive time preparing the reply brief, expending
 4 22.76 hours (or 18.21, accounting for counsel's voluntary reduction) from the day the
 5 Commissioner's response was filed through the day the reply was filed. *See* Dkt. 31-2 at 2.
 6 Expending this number of hours is excessive for a reply brief: it is, as explained earlier, in excess
 7 of the average amount of time expended on an opening brief, and the reply brief filed in this case
 8 is not particularly complex. The Court finds that a 10 percent reduction for the hours billed
 9 between April 9 and April 20, 2021, is appropriate.³

10 The Court also finds that the 10 hours counsel expended for considering whether to
 11 appeal the Court's order reversing the ALJ's decision, but rejecting two of Plaintiff's five
 12 assignments of error, is unreasonably lengthy. *See* Dkt. 36 at 3; *see also Duong v. Astrue*, 2009
 13 WL 890459, at *2 (N.D. Cal. Apr. 1, 2009) (finding that counsel reasonably expended 1.6 hours
 14 expended considering whether to appeal a Social Security decision). The Court finds that under
 15 the totality of circumstances presented in this case, expending four hours for this task is
 16 reasonable, and thus reduces Plaintiff's fee award by the equivalent of six attorney hours.⁴ *See*
 17 Dkt. 36 at 3.

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 21 ³ The amount billed during this time period is \$3,737.50, and counsel voluntarily reduced that amount to
 22 \$2990. The Court's 10% reduction of that amount totals \$299.

23 ⁴ Counsel explained that he expended 10 hours from June 11, 2021, onward, deciding whether to appeal
 the Court's order. Dkt. 31-2 at 2-3; Dkt. 36 at 3. Ten hours of attorney time would total \$2,077.80, and
 counsel offered a voluntary 20% reduction, which would bring the total billed for that time to \$1,662.24.
 The Court's further 60 percent reduction totals \$997.34.

CONCLUSION

The Court GRANTS IN PART and DENIES IN PART Plaintiff's motion, Dkt. 31, finding that a reduction of \$2,029.97 in fees is appropriate. Attorney fees of \$11,448.35 and costs of \$400 under EAJA are awarded to Plaintiff. If this award is not subject to offset allowed under the Treasury Offset Program as discussed in *Astrue v. Ratliff*, 560 U.S. 586 (2010), payment of the award should be made to Plaintiff's attorney, Michael Gilbert, PounceLaw, LLC; 4810 Point Fosdick Drive #412; Gig Harbor, WA 98335.

Dated this 19th day of October, 2021.

Skate Vaughan

S. KATE VAUGHAN
United States Magistrate Judge